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CIVIL AND POLITICAL RIGHTS, INCLUDING THE QUESTIONS OF: INDEPENDENCE OF THE JUDICIARY, ADMINISTRATION OF JUSTICE, IMPUNITY

Written statement* submitted by Friends World Committee for Consultation (Quakers), a non-governmental organization in special consultative status

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

[14 January 2002]

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*This written statement is issued, unedited, in the language(s) received from the submitting non-governmental organization(s).

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Juvenile Justice

1. Quakers have been concerned about the treatment of prisoners and the administration of justice for over 300 years. In the seventeenth century, many Quakers were imprisoned for their beliefs, and others were imprisoned at a later stage because of their conscientious refusal to perform military service. In addition to the personal experience of imprisoned Quakers, the ill-treatment of those in prison, the application of the death penalty, and the concept of punishment for offenders rather than restoration and reform, contravene the fundamental tenets of Quaker belief in the God-given value of each human being and their capacity for transformation.

2. Friends World Committee for Consultation (Quakers) would, therefore, like to draw the attention of the UN Commission on Human Rights to certain specific issues in relation to the treatment of children and juveniles.

3. The Convention on the Rights of the Child (Article 37.a), the International Covenant on Civil and Political Rights (Article 6.5) and the two 1977 Additional Protocols to the four Geneva Conventions of 1949 all prohibit the imposition of the death penalty on persons under 18 years at the time of the commission of the offence. In 2000, the Sub-Commission on the Promotion and Protection of Human Rights adopted resolution 2000/17 which *inter alia*, affirmed that this prohibition is part of customary international law. In resolution 2001/68, the Commission welcomed this Sub-Commission resolution. Quakers oppose the use of the death penalty under any circumstances, but the clear international legal prohibition in relation to its application on child and juvenile offenders, makes it inexcusable that this prohibition is not universally applied in practice. Furthermore, the prohibition contains no exceptions and is not subject to any form of derogation in relation to children or juveniles who come under military law, whether as part of their own government's armed forces, or in opposing armed forces or armed groups, or as civilians.

4. Specific international standards in relation to juvenile justice have been developed, in addition to those contained in the Convention on the Rights of the Child itself. However, it is by no means clear that they are taken into account in all situations, in particular, where children or juveniles come under military law or under national security, state security, counter-terrorism or similar legislation. There are two distinct situations where these concerns arise:

(i). In those countries where children or juveniles are recruited into the armed forces, or are in schools run by or under the control of the armed forces, and are therefore subject to military law, punishment and discipline. In these instances both the provisions of military law, and the applicable procedures, penalties and safeguards for children and juveniles under it, should be reviewed to ensure their compatability with the Convention and other juvenile justice standards.

(ii). Faced with international disturbances, internal strife or internal armed conflict, governments often introduce or activate special legislation – emergency legislation, national security or state security laws, martial law, counter-terrorism or similar legislation – designed to provide greater powers to the police or security forces. These are also situations in which children and juveniles are at risk of becoming involved with oppositions groups (whether armed or not), either voluntarily or under compulsion or coercion, or are perceived as being so involved. In such circumstances, governments also have a tendency to lower the age of criminal responsibility. There is, therefore a particular need to ensure the protection of children and juvenile suspects under such laws.

5. We, therefore, warmly welcome the recommendations in relation to juvenile justice issues of the Committee on the Rights of the Child adopted at its first day of discussion on the theme of violence against children (22 September 2000). In particular, the Committee recommended:

> "that States parties review all provisions of criminal legislation, including on criminal procedure, dealing with children under eighteen (including any special legislation applying to armed forces) so as to ensure that it reflects appropriately the provisions of the Convention on the Right of the Child (articles 37 and 40). It also recommends that States parties consider incorporating into all relevant domestic laws and regulations ... the provisions of the UN Standard Minimum Rules for the Administration of Juvenile Justice (the Beijing Rules, adopted by GA resolution 40/33 of 29 November 1985), of the UN Guidelines for the Prevention of Juvenile Delinquency (the Riyadh Guidelines, adopted by GA resolution 45/112 of 14 December 1990), of the UN Rules for the Protection of Juveniles Deprived of their Liberty (adopted by GA resolution 45/113 of 14 December 1990), and of the UN Guidelines for Action on Children in the Criminal Justice System (the Vienna Guidelines, adopted by ECOSOC resolution 1997/30)."

The Committee also recommended that:

"States parties review emergency and/or national security legislation to ensure that it provides appropriate safeguards to protect the rights of children and prevent violence against them, and that it is not used inappropriately to target children (for example, as threats to public order or in response to children living or working on the streets)."

6. The 56th UN General Assembly endorsed the Committee's request for the UN Secretary-General to conduct an in-depth study on the issue of violence against children and to put forward recommendations for appropriate action, including effective remedies and preventive and rehabilitation measures. It is essential that these juvenile justice issues are included in the scope of this study and that input is sought from those within the UN system and outside who have expertise on juvenile justice issues.

7. The whole issue of the appropriateness of the application of military law to children and juveniles merits serious attention, and should be included in the updated report on the evolution of the administration of justice through military tribunals which Mr Louis Joinet is preparing for the UN Sub-Commission on Promotion and Protection of Human Rights. Children and juveniles come before military tribunals if they are part of the government armed forces, including as pupils in military schools if they have the status of members of the armed forces. Children and juveniles may also be tried by military tribunals if they are captured fighting with opposing armed forces or armed groups, or even sometimes despite being civilians.

8. The debate surrounding the creation of the Special Court for Sierra Leone highlighted the need for greater consideration to be given to the creation of effective systems of juvenile justice, including in post-conflict situations and societies in transition, and that these should be based on the principles of restorative justice. Although the creation of such systems is a State function, there is a role for other States and bodies in providing technical and financial assistance.

9. Friends World Committee for Consultation (Quakers) calls on the Commission on Human Rights to:

(a) Welcome the UN General Assembly's endorsement of the request of the Committee on the Rights of the Child that the UN Secretary-General conduct an in-depth study on the issue of violence against children, and request the inclusion of children who are subject to military law, and of children and national security, state security, counter-terrorism and similar laws in that study;

(b) Call on States to review their national legislation as recommended by the Committee on the Rights of the Child at its first day of discussion on Violence against Children (22 September 2000), in particular to ensure that any military law, national security, state security, counter-terrorism or similar laws under which children or juveniles could be tried, are compatible with the provisions of the Convention on the Rights of the Child and the international standards on juvenile justice.

(c) Urge States to incorporate into their national legislation the international standards on juvenile justice as well as the relevant provisions of the Convention on the Rights of the Child.

(d) Confirm that the imposition of the death penalty on persons under 18 years at the time of the offence is in contravention of customary international law.

(e) Urge States to ensure that under their legislation and practice no child can be sentenced to the death penalty, to life imprisonment without the possibility of release, to forced labour or to corporal punishment.

(f) Welcome the decision of the Sub-Commission on Promotion and Protection of Human Rights (E/CN.4/Sub.2/DEC/2001/103) to request Mr Louis Joinet to update, without financial implications, his interim report on the evolution of the administration of justice through military tribunals, and encourage him to include issues in relation to children and juveniles, both civilian and military, in this, taking into account the Convention on the Rights of the Child and the international standards on juvenile justice.

(f) Call on states to develop systems of juvenile justice based on the principles of restorative justice, including in post-conflict situations and societies in transition, and urge the international community to support efforts to do so including through financial and technical assistance.